IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.180 OF 2006
WITH
CIVIL APPLICATION NO.247 OF 2006

Shantaram Ganpat Mokashi. ..Appellant.

V/s.

Jacob Luise Miranda. ..Respondent.

Mr.K.K.Malpathak for appellant.

Mr.Manoj Bhat for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 12, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant materials on record. In my opinion, grievance made in this appeal is devoid of merit. The argument canvassed before this court is that the procedure adopted by the executing court for valuing the property is inappropriate. Valuation of the property was done on the basis of some panchanama drawn on 5th December, 2005. According to the panchanama property was valued at Rs.25 Lakhs, whereas according to the appellant the value of the property should be to the extent of Rs.4.46 crores. It is then contended that it was incumbent upon the executing court to ensure that the proclamation

records objection of the appellant about the value of the suit property. In absence thereof, the procedure adopted by the executing court will have to be held as vitiated. It is then contended that the trial court has not at all considered the inadequacy of the valuation done during the said panchanama. Reliance is placed on the decision of the Apex Court in the case of **Desh Bandhu Gupta V/s. N.L.Anand & Rajinder Singh reported in JT 1993(5) S.C.313** to point out as to the procedural lapse committed by the executing court in the present case. Reliance is also placed on the decision reported in **AIR (32) 1945 Privy Council 67** in the case of **Marudanayagam Pillai V/s.Manickavasakam Chettiar** as well as case reported in **2006(3) SCC 49 between Balakrishnan V/s. Malaiyandi Konar.**

2. In my opinion, these decisions will be of no avail to the appellant. This is so because, it is seen from the record that after the order of attachment was passed, the appellant questioned the correctness of the said order. One of the grievance made during the said challenge is that it was unnecessary to attach two properties of the appellant to satisfy the decreetal amount, which is only to the extent of Rs.25 Lakhs. In any case, challenge to the

order of attachment failed, keeping questions regarding valuation of the property open, to be considered at the appropriate stage. It is not in dispute that after proclamation was issued, the appellant challenged the same by way of application Exh.110, but the said application was later on not pressed as premature. It is at that stage, the appellant could have taken up the issue about the inadequacy of the valuation of the properties which were put to auction. That challenge has been given up at the relevant point of time. It is too late for the appellant to now contend that the property, which has been later on sold in public auction has been undervalued. The record indicates that in fact the auction bid was conducted on 4th January, 2006, which was required to be adjourned as bid was not accepted and the auction sale was deferred, when it was once again conducted on 20th January, 2006. The highest bid given during the said auction came to be accepted. The fact remains that the appellant did not challenge the inadequacy of the valuation at the appropriate time. Having given up that challenge by not pressing the application at Exh.110, the respondent is justified in contending that it is not open for the appellant to now raise the said issue by relying on sub-rule(3) of the Rule 90 of Order 21 of

the Code. Sub-rule(3) of the Rule 90 provides that no application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. That is the substance of the challenge now taken up by the appellant which is clearly barred. The decisions pressed into service by the appellant as mentioned earlier will be of no avail. Hence, this appeal should fail. Hence, appeal as well as civil application are dismissed.

3. At this stage, Mr. Malpathak appearing for appellant states that status quo be maintained with regard to the suit property for reasonable period to enable the appellant to take up the matter in appeal before the Apex Court. Parties are directed to maintain status quo with regard to the suit property for a period of four weeks.